

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.Rev.Pet.No. 1140 of 2000()

CRA.233/1999 of SESSIONS COURT, ERNAKULAM
CC.54/1997 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM
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REVN. PETITIONER:

1. V.N.NANDAN,
VATTIYATH HOUSE,
CHOTTANIKKARA P.O.
2. CHOTTANIKKARA KSHEERA VYAVASAYA
SAHAKARANA SANGHOM LTD. NO.14 (D)
CHOTTANIKKARA, REPRESENTED BY ITS
SECRETARY V.N.NANDAN

BY ADV. SRI.N.A.MURALEEDHARAN

RESPONDENTS:

1. FOOD INSPECTOR, COCHIN CIRCLE,
TRIPUNITHURA.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CRL.M.P.NO.5978/2000 IN CRL.R.P.NO.1140/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

25/10/2007

\\TRUE COPY\\

K.R.UDAYABHANU, J.

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Crl.R.P.No.1140 of 2000
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Dated this the 25th day of October, 2007

O R D E R

The revision petitioners are the accused in C.C.No.54/1997 in the file of the Judicial Magistrate of the First Class-I, Ernakulam, with respect to the offences under Sections 16(1)(a)(i) of the Prevention of Food Adulteration Act and Rule 50 of P.F.A Rules read with second proviso to Section 16 of the P.F.A Act.

2. The first petitioner/the first accused who is the salesman/Secretary of the second petitioner society stands convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for two months for the offence under Section 16(1)(a)(i) of the P.F.A Act, and the second petitioner which is the Society represented by its Secretary stands sentenced to pay a fine of Rs.2,000/- for the offence under Section 16(1)(a)(i) of the P.F.A Act and to pay a fine of Rs.500/- for the offence under Rule 50 of the P.F.A. Rules, on the prosecution allegation that on 13/11/1996 at 4.p.m the Food Inspector purchased 900 ml sample of cow milk from the first accused which was found to be adulterated.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3 and Exts.P1 to P17.

4. The counsel for the revision petitioner has stressed the fact that there is no stirring of the milk before the purchase of the same by the Food Inspector. It is also pointed out that as per the analysis report, i.e., Ext.P13 the fat content is noted as 5.1% and S.N.F 7.8% and that the standard prescribed for cow milk in P.F.A Act is milk fat 3.5% and milk solid not fat 8.5%. It is pointed out that in the case the total of the content of fat and S.N.F is 12.9%, which is 0.9% more than the prescribed total content of fat and S.N.F. The adulteration was certified as there is a shortage of 0.7% so far as S.N.F is concerned. The counsel has relied on the decision of the Supreme Court in **Administrator of the City of Nagpur v. Laxman and another [1996 (2) F.C.A 297]**, wherein in a similar situation he has noted that in the above case the total solids were more than the satisfying standard of cow milk. The Supreme Court upheld the acquittal giving the benefit of doubt to the accused.

5. In the instant case the counsel has pointed out that it is the version of PW.1, the Food Inspector, that he himself has stirred the milk

and poured it in three glass bottles but he has not stated anything as to the stirring prior to the purchase. The Public Prosecutor has pleaded that on the reverse of the mahazar it is written that the Food Inspector directed to stir the 35 litre aluminium pot wherein the milk was collected and purchased 900 ml. of cow milk. The version in Ext.P5 mahazar and the testimony of PW.1 the Food Inspector is not uniform in this regard. In the circumstances and in view of the fact that the total solid contents are more than the standard prescribed, I find that the accused are entitled for the benefit of doubt. Hence, the finding that the accused are guilty of the offence under Section 16(1)(a)(i) of the P.F.A. Act and the sentence imposed are set aside. The accused are acquitted. It is also seen that there is no charge under Rule 50 of the P.F.A.Rules and that the concerned official from the local authority is not cited to establish the fact that the second accused is not having licence. Hence, the conviction under Rule 50 of the P.F.A. Rules read with second proviso to Section 16 of the P.F.A Act is also set aside.

The criminal revision petition is allowed as above.

K.R.UDAYABHANU,
Judge

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